



BILLING CODE: 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Revision; Submission for OMB Review; Regulation E – Electronic Fund Transfer Act and Regulation Z – Truth in Lending Act

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning revisions to the information collections titled “Regulation E – Electronic Fund Transfer Act” and “Regulation Z – Truth in Lending Act.” The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Commenters are encouraged to submit comments by e-mail, if possible.

You may submit comments by any of the following methods:

- E-mail: prainfo@occ.treas.gov.
- Mail: Chief Counsel's Office, Attention: Comment Processing, 1557-NEW, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- Hand Delivery/Courier: 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- Fax: (571) 465-4326.

Instructions: You must include "OCC" as the agency name and "1557-NEW" in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557-NEW, U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503 or by email to oira_submission@omb.eop.gov.

You may review comments and other related materials that pertain to this information collection¹ following the close of the 30-day comment period for this notice by any of the following methods:

¹ On May 20, 2019, the OCC published a 60-day notice for this information collection, 84 FR 22931.

- Viewing Comments Electronically: Go to *www.reginfo.gov*. Click on the “Information Collection Review” tab. Underneath the “Currently under Review” section heading, from the drop-down menu select “Department of Treasury” and then click “submit.” This information collection can be located by searching by OMB control number “1557-NEW” or Regulation E – Electronic Fund Transfer Act” and “Regulation Z – Truth in Lending Act.” Upon finding the appropriate information collection, click on the related “ICR Reference Number.” On the next screen, select “View Supporting Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov*, please contact the Regulatory Information Service Center at (202) 482-7340.
- Viewing Comments Personally: You may personally inspect comments at the OCC, 400 7th Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649-5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Chief Counsel’s Office, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), federal agencies must obtain approval from the OMB for each collection of information

that they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or disclose information to a third party. The OCC asks that it approve the information collection contained in this notice.

Title: Regulation E – Electronic Fund Transfer Act and Regulation Z – Truth in Lending Act.

OMB Control Nos.: 1557-NEW.²

Type of Review: Regular review.

Description: The Electronic Fund Transfer Act (EFTA)³ and Regulation E⁴ require disclosure of basic terms, costs, and rights relating to electronic fund transfer services debiting or crediting a consumer’s account. The Truth in Lending Act (TILA)⁵ and Regulation Z⁶ require that the costs and terms of credit be disclosed to consumers.

The Prepaid Accounts final rules issued by the Consumer Financial Protection Bureau (CFPB)⁷ require financial institutions to make available to consumers disclosures before a consumer acquires a prepaid account. This notice outlines the requirements of the 2016 rule as amended by the 2018 rule.

Regulation E

Under 12 CFR 1005.18(b), a financial institution is required to make available a short form and a long form disclosure before the consumer acquires a prepaid account,

² Regulations E and Z are currently covered by OMB Control No. 1557-0176, which also covers other consumer regulations. The OCC is requesting a new control number for this portion of Regulations E and Z only.

³ 15 U.S.C. 1693 *et seq.*

⁴ 12 CFR part 1005.

⁵ 15 U.S.C. 1601 *et seq.*

⁶ 12 CFR part 1026.

⁷ 81 FR 83934 (November 22, 2016) and 83 FR 6364 (February 13, 2018).

subject to certain exceptions. Most of the content required in the long form disclosure is already provided in prepaid account agreements. Section 1005.18(f)(3) requires that certain disclosures be made on the actual prepaid account access device, including the name of the financial institution and the URL of its website, and a telephone number the consumer may use to contact the financial institution about the prepaid account.

Financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) may meet the requirement of providing the long form disclosure after acquisition by allowing the long form disclosure to be delivered electronically, without receiving consumer consent under the E-Sign Act,⁸ if the disclosure is not provided inside the prepaid account packaging material and the financial institution is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information. If a financial institution provides pre-acquisition disclosures in writing and a consumer subsequently completes the acquisition process online or by telephone, the financial institution is not required to provide the disclosures again either electronically or orally. Financial institutions that disclose additional fee types with three or more fee variations may consolidate them into two categories and disclose them on the short form.

Section 1005.18(b)(9)(i)(C) includes a requirement that a financial institution provide pre-acquisition disclosures in a foreign language if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in that foreign language. That requirement is not applicable to payroll card accounts and government benefit accounts where the foreign language is

⁸ Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

offered by telephone only via a real-time language interpretation service provided by a third party or directly by an employer or government agency on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account recipients.

Section 1005.18(c)(1) requires financial institutions to furnish periodic statements to the consumer unless the provider uses the alternative method of compliance. Under this alternative method, the periodic statements must include: (1) a telephone number that the consumer may call to obtain the account balance; (2) the means by which the consumer can obtain an electronic account history, such as the address of a website; and (3) a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by § 1005.7(b)(6)), including a telephone number to call to request a history. Section 1005.18(c)(5) requires that financial institutions disclose to consumers a summary total of the amount of all fees assessed against the consumer's prepaid account for both the prior month as well as the calendar year to date. This information must be disclosed on any periodic statement and any electronic or written history of account transactions provided or made available by the financial institution.

The limited liability and error provisions of Regulation E now extend to all prepaid accounts, except those that have not successfully completed the financial institution's consumer identification and verification process. With regard to accounts where the consumer's identity is later verified, financial institutions are not required to resolve errors and limit liability for disputed transactions occurring prior to the verification. For accounts in programs where there is no verification process, financial

institutions must either explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers, or explain that there are no such protections, and that such financial institutions comply with the process (if any) that they disclose.⁹

Pursuant to § 1005.18(h)(1), except as provided in § 1005.18(h)(2) and (3), the effective date for the Prepaid Accounts Rules is April 1, 2019. If, as a result of § 1005.18(h)(1), a financial institution changes the terms and conditions of a prepaid account, such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, the financial institution must notify consumers with accounts acquired before April 1, 2019, at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information fewer than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to provide notice of the change within 30 days of obtaining the consumer's contact information.

If a financial institution has received an E-Sign consent from the consumer, the financial institution may notify the consumer electronically. Otherwise, if a financial institution mails or delivers written communications to the consumer within the applicable time period, that financial institution must send a notice in physical form. If the financial institution will not mail or deliver communications to the consumer within the applicable time period, then the financial institution may notify the consumer in

⁹ 12 CFR 1005.18(e)(1) and (2).

electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

Section 1005.18(h)(2)(ii) requires that financial institutions notify any consumer, who acquires a prepaid account after the effective date specified in packaging printed prior to the effective date, of any changes as a result of § 1005.18(h)(1) taking effect that would have caused a change-in-terms notice to be required under § 1005.8(a) or § 1005.18(f)(2) for existing customers within 30 days of acquiring the customer's contact information. In addition, financial institutions must mail or deliver updated initial disclosures pursuant to §§ 1005.7 and 1005.18(f)(1) within 30 days of obtaining the consumer's contact information. Those financial institutions that are affected should not incur significant costs associated with notifying consumers and providing updated initial disclosures. Consumers who have consented to electronic communication may receive the notices and updated disclosures electronically, at a minimal cost to financial institutions. Those consumers who cannot be contacted electronically may receive the notices and updated initial disclosures together with another scheduled mailing within the 30-day time period. Any remaining consumers who are not scheduled to receive mailings may be notified without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

Section 1005.19(b) requires certain issuers to submit to the CFPB, on a rolling basis, short form disclosures, prepaid account agreements (including fee schedules) that are offered, amended, or withdrawn. Prepaid account issuers are permitted to delay submitting a change in the list of names of other relevant parties to a particular prepaid account agreement until the earlier of such time as the issuer is otherwise submitting an

amended agreement or changes to other identifying information about the issuer and its submitted agreements to the CFPB, or May 1 of each year (for updates between the last submission and April 1 of that year). Short form and long form disclosures may be provided to the CFPB as separate addenda to the agreement, rather than integrated into the agreement or as a single addendum.

Regulation Z

The CFPB's rules cover overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners with certain exceptions. The CFPB is expanding the exception in 12 CFR 1026.61(a)(4) that allows prepaid account issuers to provide certain incidental forms of credit structured as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. Previously, the exception only applied where (1) the prepaid card could not access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer had a general policy and practice of declining transactions that will take the account negative; and (3) the prepaid account issuer customarily did not charge credit-related fees. Section 1026.61(a)(4), as amended, permits a prepaid account issuer to take advantage of the exception with respect to the negative balance even if a covered separate credit feature offered by a business partner is attached to the prepaid account, so long as the other requirements are met.

Creditors offering these covered overdraft credit features in connection with a prepaid account are required to inform consumers of the costs and terms before consumers use the credit feature and inform consumers of certain subsequent changes to

the terms of the credit feature. The initial required information includes the finance charge and other charges, the Annual Percentage Rate (APR), a description of how balances subject to a finance charge are calculated, and any collateral used to secure repayment. If the creditor changes certain terms initially disclosed, or increases the minimum periodic payment, a written change-in-terms notice generally must be provided to the consumer at least 45 days prior to the effective date of the change.

Creditors are required to provide a written periodic statement of activity for each billing cycle. The statement must be provided for each account that has a balance of more than \$1 or on which a finance charge is imposed, and the statement must include a description of activity on the account, the opening and closing balances, any finance charges imposed, and payment information.

Creditors are required to notify consumers about their rights and responsibilities regarding billing errors and must provide either a complete statement of billing rights annually or a summary of those billing rights and responsibilities on each periodic statement. If a consumer alleges a billing error, the creditor must provide, within 30 days of receipt, an acknowledgment that the creditor received the consumer's error notice. The creditor must report on the results of its investigation within 90 days. If a billing error did not occur, the creditor must provide an explanation as to why the creditor believed an error did not occur and provide documentary evidence to the consumer upon request. The creditor must also notify the consumer of the portion of the disputed amount and related finance or other charges that the consumer still owed and when payment of those amounts was due.

Persons offering these covered overdraft credit features in connection with a prepaid account are required when advertising their products to include certain basic credit information if the advertisement refers to specified credit terms or costs. Persons offering these features in connection with a prepaid account are required to send copies of the overdraft credit feature agreement to the CFPB. Lastly, persons offering these features in connection with a prepaid account must provide additional disclosures with solicitations and applications. Such card issuers must disclose key terms of the account, such as the APR, information about variable rates, and fees such as annual fees, minimum finance charges, and transaction fees for purchases.

Affected Public: Businesses or other for-profit entities.

Burden Estimates:

Regulation E:

Estimated Number of Respondents: 1,106.

Estimated Annual Burden: 6,605 hours.

Regulation Z:

The CFPB has indicated that the only respondents affected by these changes are those that they regulate. Therefore, the OCC will not be taking any burden for these changes.

Frequency of Response: On occasion.

Comments: On May 20, 2019, the OCC issued a notice for 60 days of comment concerning the collection, 84 FR 22931. No comments were received. Comments continue to be invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

- (b) The accuracy of the OCC's estimates of the information collection burden;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 25, 2019.

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Office of the Comptroller of the Currency.

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